



11/21/08 DAC

PATENT
Customer No. 22,852
Attorney Docket No. 09812.0170-00

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re U.S. Patent No. 7,379,760)
Issue Date: May 27, 2008) Group Art Unit: 2617
Inventor: Miruka ISHII)
For: DATA TRANSMISSION-) Examiner: Ewart, James D.
RECEPTION SYSTEMS AND)
DATA TRANSMISSION-) Confirmation No.: 5910
RECEPTION METHOD)

Mail Stop Petition

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

**PETITION UNDER 37 C.F.R. § 1.183 FOR WAIVER
OF THE REQUIREMENT UNDER 37 C.F.R. § 1.705(d)**

Pursuant to 37 C.F.R. § 1.183, Patentee petitions the Commissioner to waive the requirements of 37 C.F.R. § 1.705(d) that any request for reconsideration of the patent term adjustment indicated in an issued patent must be filed within two months of the date the patent issues.

The U.S. Patent and Trademark Office (USPTO) issued the above-referenced U.S. Patent No. 7,379,760 (the '760 patent) on May 27, 2008, with a patent term adjustment (PTA) of 1295 days. Subsequently, on September 30, 2008, U.S. District Court for the District of Columbia ruled in *Wyeth v. Dudas* that the PTO had made an error in the manner it determined PTA. Specifically, the Court's decision relates to situations in which separate time periods of PTA accrue due to PTO examination delay.

and those time periods do not overlap. The Court ruled that in such situations, the PTA should be determined as the sum of the term adjustments of the respective separate time periods, rather than the greater one of the term adjustments, the latter practice being the PTO's manner of PTA determination used to date.

Patentee requests waiver of Rule 1.705(d) to permit filing and consideration of the accompanying Determination of Patent Term Adjustment - Post Grant, in which patentee requests a change in the PTA based on determination in a manner consistent with the Court's decision referred to above.

This Petition is accompanied by the required petition fee of \$400.00, as set forth in 37 C.F.R. § 1.17(f). If there are any other fees due in connection with the filing of this Petition, please charge such fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: November 21, 2008

By: /David W. Hill/
David W. Hill
Reg. No. 28,220



PATENT
Attorney Docket No. 09812.0170-00

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re U.S. Patent No. 7,379,760)	
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Issue Date: May 27, 2008)	Group Art Unit: 2617
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Inventor: Miruka ISHII)	
)	Examiner: Ewart, James D.
For: DATA TRANSMISSION-)	
RECEPTION SYSTEMS AND)	
DATA TRANSMISSION-)	Confirmation No.: 5910
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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

APPLICATION FOR PATENT TERM ADJUSTMENT-POST-GRANT

In accordance with 37 C.F.R. § 1.705(d), Applicant hereby applies for patent term adjustment under 35 U.S.C. § 154(b) of 1965 days. This application is being filed with a Petition Under 37 C.F.R. § 1.183 requesting that the Commissioner waive the 2-month filing period set forth in 37 C.F.R. § 1.705(d) in light of a recent decision, rendered on September 30, 2008, by the U.S. District Court for the District of Columbia in *Wyeth v. Dudas*, No. 07-1492 (JR), 2008 U.S. Dist. LEXIS 76063 (D.D.C. Sept. 30, 2008).

U.S. Patent No. 7,379,760 currently indicates a patent term adjustment of 1295 days on its cover.

Applicant has calculated a patent term adjustment of 1965 days based on the following facts:

The above-identified application was filed November 9, 2001.

The first Office action was mailed on March 24, 2006, resulting in a PTO delay of 1170 days beyond the 14 months provided by 35 U.S.C. § 154(b)(1)(A).

Applicant filed a response to the first Office action on April 11, 2006.

A second Office action was mailed July 17, 2006.

Applicant filed a response to the second Office action on October 17, 2006.

A third Office action was mailed January 25, 2007.

Applicant filed a response to the third Office action on April 25, 2007.

A Notice of Allowance was mailed July 19, 2007, and corrected Notices of Allowability were mailed on August 22, 2007, November 16, 2007, and November 29, 2007.

Applicant paid the issue fee on February 27, 2008.

U.S. Patent No. 7,379,760 issued on May 27, 2008, resulting in a PTO delay of 1295 days under the 3-year pendency rule provided by 35 U.S.C. § 154(b)(1)(B).

Under *Wyeth v. Dudas*, the period of patent term extension under 35 U.S.C. § 154(b)(1)(B) begins to toll three years after filing the application, i.e., three years from November 9, 2001. Thus, the period of patent term extension under 35 U.S.C. § 154(b)(1)(B) began to toll on November 10, 2004. The first PTO delay occurred on March 24, 2006, which was 500 days after November 10, 2004. *Wyeth v. Dudas* instructs that the PTO delay of 670 days (the difference between the first PTO delay of 1170 days and the 500 days that overlap between the 14 month delay provided by 35 U.S.C. § 154(b)(1)(A) and the 3-year pendency rule provided by 35 U.S.C. § 154(b)(1)(B)) should be counted in addition to the subsequent 1295 day PTO delay

under the 3-year pendency rule. Thus, the total of PTO adjustment is 1965 days.

Applicant respectfully requests that the current patent term adjustment be reconsidered.

If there are any other fees due in connection with the filing of this Application,
please charge such fees to Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: November 21, 2008

By: /David W. Hill/
David W. Hill
Reg. No. 28,220